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In the Supreme Court of the United States

OCTOBER TERM, 1975

CARLA A. HILLS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, PETITIONER

v.

DOROTHY GAUTREAUX, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

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OPINIONS BELOW

The initial opinion of the district court (Pet. App. 1a-16a) is unreported. The initial opinion of the court of appeals (Pet. App. 17a-36a) is reported at 448 F. 2d 731. The district court's decision denying metropolitan relief (Pet. App. 37a-40a) is reported at 363 F. Supp. 690. The court of appeals' decision reversing that order (Pet. App. 41a-60a) and its order denying rehearing (Pet. App. 61a-63a) are reported at 503 F. 2d 930 and 939.

JURISDICTION

The judgment of the court of appeals (Pet. App. 64a) was entered on August 26, 1974, and a timely petition for rehearing was denied on September 30, 1974. On December 20, 1974, Mr. Justice Rehnquist extended the time for filing a petition for a writ of certiorari to and including February 13, 1975, and on February 6, 1975, Mr. Justice Brennan further extended the time for petitioning to and including February 20, 1975. The petition was filed on the latter date and granted on May 12, 1975 (App. 223). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in light of *Milliken* v. *Bradley*, 418 U.S. 717, it is inappropriate for a federal court to order inter-district relief for discrimination in public housing in the absence of a finding of an inter-district violaton.

STATUTE INVOLVED

Section 601 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d, provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

STATEMENT

Respondents, six black residents of Chicago, Illinois, brought this action in 1966 against the Housing Assistance Administration, then an agency of the Department of Housing and Urban Development ("HUD"), on behalf of the class of black tenants in, and applicants for, family public housing projects in Chicago (Complaint, pp. 2-3; App. 26-27).[1] The complaint alleged generally that HUD was unlawfully "assist[ing] in the carrying on of a racially discriminatory public housing system within the City of Chicago" (Complaint, p. 2; App. 26). Respondents sought a declaratory judgment, an injunction against any further federal financial assistance to the Chicago Housing Authority ("CHA") "in support of the racially discriminatory aspects of the public housing system within the City of Chicago," and "such other and further relief as the Court may deem just and equitable" (Complaint, pp. 15-16; App. 34-35).

More specifically, the complaint alleged that the residential areas within the City of Chicago were "highly segregated along racial lines," and that most of the tenants in, and applicants for, family public housing projects in Chicago were black (Complaint, p. 5; App. 28); that between 1950 and 1966 "[s]ub-

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[1] In 1969, respondents advised the district court that the first named plaintiff-respondent, Dorothy Gautreaux, had died (Suggestion on Record of Death, filed July 14, 1969; App. 40). There are, however, five other named plaintiff-respondents, and the cause has been certified as a class action. 265 F. Supp. 582, 583.

stantially all" of the sites for family public housing selected by CHA and approved by the Chicago City Council had been located in predominantly black residential areas of the City (Complaint, pp. 9-11; App. 30-32); that all sites selected for the five projects proposed in 1965 and the twelve projects proposed in 1966 were in predominantly black areas (*ibid.*); that CHA had "deliberately chosen sites for such projects which would avoid the placement of Negro families in white neighborhoods" (Complaint, p. 11; App. 32); and that the effect of this practice was to "continue and strengthen existing patterns of residential and school segregation in the City of Chicago * * *" (Complaint, p. 13; App. 33).

The complaint alleged that HUD was implicated in this segregatory practice by virtue of the fact that it had in the past provided financial assistance to CHA for the construction of public housing projects in Chicago and either already had provided similar financial assistance, or had assured CHA that it would provide such assistance, in connection with the proposed 1965 and 1966 projects (Complaint, p. 14; App. 33-34). Respondents claimed that, by providing such assistance, HUD had violated both the Fifth Amendment (Count I of the Complaint, pp. 14-15; App. 34) and Section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d (Count II of the Complaint, pp. 16-18; App. 35-36).[2]

[2] Counts III and IV of the Complaint were similar to Counts I and II but failed to allege that CHA had deliberately chosen sites to avoid placing black families in white neighborhoods (Complaint, pp. 19-22; App. 36-39).

This action was stayed in the district court pending disposition of respondents' companion suit against CHA. In that suit, the district court granted summary judgment against CHA, finding that its site-selection and tenant-assignment practices had been intentionally discriminatory. *Gautreaux* v. *Chicago Housing Authority*, 296 F. Supp. 907 (N.D. Ill.).[3] The facts underlying this finding were as follows: Ill. Rev. Stat., c. 67½, § 9 (1959), required approval by the City Council of each public housing site proposed by CHA; before submitting a proposal to the council for approval, CHA would informally submit it for the approval of the alderman in whose ward the site was located; between 1955 and 1966, CHA proposed 41 sites for family public housing in predominantly white residential areas and 62 sites in predominantly black residential areas, but only 2 of the sites in white neighborhoods were approved by the local alderman and the City Council, whereas 49 of the sites in black neighborhoods were approved (296 F. Supp. at 911); over 99½ percent of the units planned for white neighborhoods had been vetoed by the local alderman or City Council, whereas only about 10 percent of the units planned for black neighborhoods had been vetoed (296 F.

[3] The court had earlier dismissed those counts of the complaint against CHA which failed to allege deliberate discrimination. *Gautreaux* v. *Chicago Housing Authority*, 265 F. Supp. 582 (N.D. Ill.).

Supp. at 912).[4] The district court concluded that "[n]o criterion, other than race, can plausibly explain [this pattern]" (*ibid.*). The district court also found that CHA had imposed racial quotas restricting the number of black tenants in four older family public housing projects that had been built in white neighborhoods. 296 F. Supp. at 909.

The district court enjoined CHA from clearing proposed sites informally with local aldermen and directed CHA to adopt a new tenant-assignment policy. *Gautreaux* v. *Chicago Housing Authority*, 304 F. Supp. 736, 739, 741 (N.D. Ill.). In addition, the court directed CHA to build its next 700 dwelling units in the substantially white neighborhoods of Chicago (*i.e.*, the neighborhoods of Chicago within the "General Public Housing Area"[5]). 304 F. Supp. at 737, 738.[6] The court's order provided that, thereafter, CHA must locate at least three-fourths of its new family public housing units in the General Public Housing Area. The order permitted

[4] The facts with regard to public housing for the elderly were quite different from those pertaining to family public housing. The district court found that 54½ percent of CHA's 5,050 units of public housing for the elderly were in substantially all white neighborhoods. 296 F. Supp. at 911. Respondents' suits against HUD and CHA relate only to family public housing.

[5] The court's order defined "General Public Housing Area" as those portions of Cook County that lie at least one mile from any census tract having a non-white population of 30 percent or more. The rest of Cook County constitutes the "Limited Public Housing Area".

[6] Certain pending projects were exempted from this requirement. 304 F. Supp. at 738.

CHA to locate up to one-third of its new units outside the City of Chicago. 304 F. Supp. at 739. Although CHA's jurisdiction does not extend beyond the City's political boundaries, it is authorized to contract with the Cook County Housing Authority to construct and operate units throughout the county. See Ill. Rev. Stat., c. 67½, §§ 3, 17(b), 27c (1959).[7] CHA was also ordered to "use its best efforts to increase the supply of Dwelling Units as rapidly as possible * * *" (304 F. Supp. at 741) and to submit reports to the court regarding its activities in implementing the decree. The decree was subsequently modified to order CHA to propose sites for 1,500 dwelling units by a specified date. The district court's order was affirmed by the court of appeals, *Gautreaux* v. *Chicago Housing Authority*, 436 F. 2d 306 (C.A. 7), and this Court denied certiorari. 402 U.S. 922.

[7] In the court below, respondents stated (Brief of Plaintiffs-Appellants, filed March 11, 1974, p. 39, n. 2):

> The voluntary effort was a 100% failure. CHA and the Housing Authority of Cook County (HACC) entered into an agreement for the joint development of public housing in suburban communities, and HUD approved the agreement on June 26, 1972. (CHA Report No. 6, pp. 6-7, Record Doc. 287.) Under an arrangement with CHA, letters were then sent by HACC to 103 mayors and presidents of cities and villages in Cook County. Negative or no responses were received from 98, two others said the matter was being studied (there was no further word from them), and three who indicated a willingness to discuss the matter ultimately declined to proceed further. [Plaintiffs' Exhibit 12.]

The district court then dismissed the action against HUD for lack of jurisdiction and failure to state a claim upon which relief could be granted (Pet. App. 1a-16a). The court of appeals reversed and directed that summary judgment be entered for respondents (Pet. App. 17a-36a). Both courts acknowledged that HUD had made "numerous and consistent efforts" toward desegregating public housing in Chicago (Pet. App. 9a, 28a) and that HUD had tried to correct "the activity complained of, succeeded in some respects, but continued funding knowing of the possible action the City Council would take" (Pet. App. 12a, 33a).[8] The court of appeals also stated that it was "fully sympathetic" with HUD's "dilemma" of having to choose between, on the one hand, perpetuating residential segregation by funding the construction of desperately needed public housing (see Pet. App. 29a, n. 12) on the sites that had been approved by the City Council and, on the other hand, "deny[ing] housing altogether to the thousands of needy Negro families of [Chicago]" (Pet. App. 29a, 31a).

Nevertheless, the court of appeals held that "HUD's knowing acquiescence in CHA's admitted discrimina-

[8] In 1966, HUD rejected five of the sites selected by CHA which were among those specifically challenged in respondents' complaint. The sites were rejected because they were in black neighborhoods characterized, at least in some cases, by a high concentration of public housing (Deposition of Joseph Burstein filed January 15, 1970, p. 105; App. 41). That year, for the first time in more than twenty years, the Chicago City Council approved family public housing sites in white neighborhoods. See *Gautreaux* v. *Chicago Housing Authority, supra*, 296 F. Supp. at 911.

tory housing program" denied respondents due process, in violation of the Fifth Amendment, and also violated Section 601 of the 1964 Civil Rights Act, 42 U.S.C. 2000d (Pet. App. 29a). The court emphasized that its "holding should not be construed as granting a broad license for interference with the programs and actions of an already beleaguered federal agency" and suggested that the district court might find that "little equitable relief above the entry of a declaratory judgment and a simple 'best efforts' clause will be necessary to remedy the wrongs which have been found to have been committed" (Pet. App. 36a).

On remand, the district court consolidated the two actions against CHA and HUD (see Order entered November 26, 1971; App. 49), and has attempted since that time to frame and implement appropriate remedial decrees.[9] In the order underlying the present petition, the district court directed HUD to use its "best efforts to cooperate with CHA in its efforts

[9] In one remedial decree, the district court enjoined HUD from releasing model cities funds to Chicago until the City Council approved 700 sites for public housing. *Gautreaux* v. *Romney*, 332 F. Supp. 366 (N.D. Ill.). The court of appeals reversed that order on the ground that it was improper to threaten the termination of one program, untainted by discrimination, in order to remedy discrimination in a different program. *Gautreaux* v. *Romney*, 457 F. 2d 124 (C.A. 7).

In another remedial decree, the district court ordered CHA to proceed with the construction of 1,500 dwelling units. *Gautreaux* v. *Chicago Housing Authority*, 342 F. Supp. 827 (N.D. Ill.), affirmed, 480 F. 2d 210 (C.A. 7), certiorari denied, 414 U.S. 1144.

to increase the supply of dwelling units, in conformity with" all applicable federal statutes, HUD rules and regulations, and the provisions of the judgment against CHA and all other final orders in this litigation (Pet. App. 40a).

The district court rejected the order proposed by respondents, which would have directed CHA and HUD to use their best efforts to provide dwelling units outside the City of Chicago in Cook, DuPage, and Lake Counties, and refused to conduct additional proceedings designed to develop a plan of metropolitan area-wide relief.[10] The court stated (Pet. App. 38a):

> [S]uch relief * * * is simply unwarranted here because it goes far beyond the issues of this case. * * * [T]he wrongs were committed within the limits of Chicago and solely against residents of the City. It has never been alleged that CHA and HUD discriminated or fostered racial discrimination in the suburbs and, given the limits of CHA's jurisdiction, such claims could never be proved against the principal offender herein.

The court of appeals reversed and remanded the case to the district court for "adoption of a comprehensive metropolitan area plan that will not only disestablish the segregated public housing system in the City of Chicago * * * but will increase the supply of dwelling units as rapidly as possible" (Pet. App. 59a). The court distinguished *Milliken* v. *Bradley*, 418 U.S. 717, which had been decided while

[10] See Plaintiffs' Motion and Proposed Order, filed January 29, 1973 (App. 202-207).

the appeal was pending, on the grounds that there was no tradition of local control of public housing comparable to the tradition in public schools, that the administrative problems of an inter-district remedy are far less serious for public housing than for schools, that there was evidence of racial discrimination in public housing in the Chicago suburbs, and that HUD and CHA had agreed that a metropolitan solution to the Chicago housing problem was necessary. Judge Tone dissented on the ground that *Milliken* was controlling (Pet. App. 60a).

In denying the government's motion for rehearing, the court of appeals concluded that the showing of a significant inter-district segregative effect required by *Milliken* as a precondition of an inter-district remedy was met in this case by the supposition that "defendants' discriminatory site selection within the City of Chicago may well have fostered racial paranoia and encouraged the 'white flight'" to the suburbs (Pet. App. 62a).[11]

[11] The court of appeals also directed that "intra-city relief should proceed apace without further delay" (Pet. App. 63a). The district court then referred the case to a master "to determine and identify the precise causes of the five-year delay in implementing [the court's] judgment orders, and to recommend a plan of action that will expedite the realization of [its] various orders and judgments." *Gautreaux* v. *Chicago Housing Authority*, 384 F. Supp. 37, 38 (N.D. Ill.). CHA's petition for mandamus seeking to vacate this referral was denied. *Chicago Housing Authority* v. *Austin*, 511 F. 2d 82 (C.A. 7).

On September 30, 1974, CHA reported to the district court that construction had commenced on four projects for 63 dwelling units, the first units constructed under the 1969

On February 25, 1975, the district court granted respondents' motion to file a supplemental complaint and to add as defendants eleven local housing authorities, the Illinois Housing Development Authority, the Northeastern Illinois Planning Commission, and the director of the Illinois Department of Local Government Affairs (Order entered February 25, 1975; App. 211).[12] The supplemental complaint does not allege that any of the newly added defendants has injured respondents, but it nevertheless requests a declaration that the new defendants should "participate in carrying out and implementing the judgment orders of the Court heretofore entered in this consolidated cause and in the development and implementation of a comprehensive metropolitan area plan to disestablish and remedy the effects of the segregated public housing system in Chicago by increasing the supply of dwelling units as rapidly as possible" (Second Supplemental Complaint, p. 9; App. 218-219). The supplemental complaint also requests an order directing the Northeastern Illinois Planning Commission, in cooperation with such other defend-

order (CHA Report No. 14, filed September 30, 1974, p. 1; App. 208).

[12] The eleven housing authorities, together with CHA, constitute all of the housing authorities currently operating in the Chicago Housing Market Area, which includes Cook, DuPage, Lake, McHenry, Kane, and Will Counties, Illinois (Br. in Opp. 16, n. 2; Second Supplemental Complaint, p. 2; App. 214).

ants as may desire to participate, to prepare such a metropolitan area-wide plan (*ibid.*).[13]

SUMMARY OF ARGUMENT

The established equitable principle that remedies must be tailored to reflect the nature of the violation has recently been reaffirmed by this Court in *Milliken* v. *Bradley*, 418 U.S. 717, which held that school districts throughout the Detroit metropolitan area could not be consolidated in a metropolitan area-wide plan designed to remedy racial segregation occurring within a single school district. The Court there reasoned that without an inter-district violation, or a violation causing a substantial, segregatory inter-district effect, there is no basis for an inter-district remedy. That reasoning controls this case.

The complaint here alleged only racial discrimination in family housing within the City of Chicago; the district court expressly found that "the wrongs were committed within the limits of Chicago and solely against residents of the City" (Pet. App. 38a). This finding was not reversed on appeal. Moreover, the record contains no showing of any racially segre-

[13] The "best efforts" order against HUD was amended on May 8, 1975, by the district court (Order entered May 8, 1975; App. 221). The order sets forth certain guidelines under which HUD may provide funds for the construction of family public housing units within the City of Chicago. The guidelines provide that a specified percentage of such family public housing shall be constructed in the General Public Housing Area of Chicago, and made available to the respondent class.

gatory inter-district effect resulting from the violation within Chicago, and the court of appeals' speculation concerning the possibility that such segregation stimulated the movement of white residents out of Chicago is wholly unsupported. Thus, under *Milliken*, inter-district relief is improper.

Even if, contrary to our principal argument, the court of appeals were correct in concluding that the decision in *Milliken* turned on practical considerations and on the strength of the tradition of local control over public schools, similar factors dictate the same result here. The tradition of local control over urban land use has been as consistently honored as the local school tradition, and is effectively preserved in the statutes governing HUD's activities at issue here. Moreover, the practical problems of implementing an inter-district public housing remedy are substantial. Thus, the court below erred, not only in its construction of *Milliken*, but also in applying what it considered to be the decisive factors in *Milliken* to the present case.

ARGUMENT

IT IS INAPPROPRIATE FOR A FEDERAL COURT TO ORDER INTER-DISTRICT RELIEF FOR DISCRIMINATION IN PUBLIC HOUSING IN THE ABSENCE OF A FINDING OF AN INTER-DISTRICT VIOLATION.

A. Separate Governmental Districts May Not Be Consolidated For Remedial Purposes In The Absence Of Findings Of Inter-District Violation And Inter-District Effect.

The court of appeals, by remanding this case to the district court for "the adoption of a comprehensive metropolitan area plan" (Pet. App. 59a), has departed from the long-standing rule of federal equity practice that "the nature of the violation determines the scope of the remedy." *Swann* v. *Board of Education*, 402 U.S. 1, 16. See also *Brown* v. *Board of Education*, 349 U.S. 294, 300. The state and local agencies that are made subject to the district court's remedial orders by that decision (see p. 12, *supra*), with the exception of CHA itself, have not been implicated in any unlawful discrimination; they have in effect been consolidated for remedial purposes by the court of appeals apparently solely because the court believed that metropolitan area-wide residential desegregation is a desirable goal of social policy.[14] That judicial view of desir-

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[14] Respondents contended in their brief in opposition that without regard to whether the order below was proper as to the state and local agencies that have not followed racially discriminatory public housing practices, "the proposed rem-

able social policy does not, standing alone, justify the award of inter-district relief. *Milliken* v. *Bradley*, 418 U.S. 717.

At issue in *Milliken* was the propriety of an award of inter-district relief as a remedy for the racially discriminatory actions of a single school district. In concluding that the award of inter-district relief was improper, the Court reasoned (418 U.S. at 744-745):

> The controlling principle consistently expounded in our holdings is that the scope of the rem-

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edy is not 'inter-district' as regards HUD" (Br. in Opp. 11). We answered this argument in our reply memorandum, where we explained (Reply Mem. 2; footnote omitted):

> [Respondents'] argument necessarily assumes that the plan can properly be analyzed solely on the basis of its relation to one of the participants, and thus that the same plan might be proper as to HUD even if improper as to the local housing authorities who are necessary participants in the provision of adequate housing. Although HUD collects housing data, makes studies, and attempts to co-ordinate housing developments on an area-wide basis, it nevertheless implements its program through co-operation with local housing authorities, since it has no legal power to coerce them to participate in any co-ordinated metropolitan area-wide plan. Similarly, the State in *Milliken* v. *Bradley* [418 U.S. 717] implemented its plans through local school districts, and, although it had ultimate authority to compel compliance with a metropolitan area-wide plan (Marshall, J., dissenting [418 U.S. at 795-797]), such a plan was inappropriate inter-district relief as to the State as much as to the local school districts. *A fortiori*, here, where HUD implements its plans through local housing agencies, and has no power to compel their compliance with any general plan, a metropolitan area-wide plan is inter-district relief as to HUD as much as it is to CHA and the suburban housing agencies.

> edy is determined by the nature and extent of the constitutional violation. *Swann*, 402 U.S., at 16. Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation. Thus an interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an interdistrict remedy would be appropriate to eliminate the interdistrict segregation directly caused by the constitutional violation. Conversely, without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy.

As Mr. Justice Stewart specifically noted in his concurring opinion in *Milliken* (418 U.S. at 754), the lower courts there erred in awarding inter-district relief, "for the simple reason that the remedy they thought necessary was not commensurate with the constitutional violation found."

In short, this Court concluded in *Milliken* that separate governmental districts may not be consoli-

dated for remedial purposes in the absence of a finding of inter-district violation or substantial, segregatory, inter-district effect. That decision, while rooted in federal equity principles,[15] may also reflect con-

[15] Respondents err in contending (Br. in Opp. 22-32) that the Court's holding in *Milliken* was based upon considerations of practicality rather than equity. The Court expressly stated that, notwithstanding considerations of practicality, inter-district relief would be appropriate where inter-district violation and effect had been established. 418 U.S. at 744-745; see also 418 U.S. at 754-756 (concurring opinion of Mr. Justice Stewart); 418 U.S. at 769 (dissenting opinion of Mr. Justice White). We nevertheless set forth below (pp. 28-40, *infra*), the practical considerations militating against the award of inter-district relief here.

The equitable principle articulated and applied by this Court in *Milliken* is in fact embodied in Section 602 of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1, which provides that the sanction for violation of any HUD rule, regulation, or order implementing the non-discrimination requirement of Section 601 of the Act "shall be limited to the particular political entity, or part thereof [found to be in violation] * * * and * * * to the particular program [affected]." Earlier in this litigation, the court of appeals relied upon this statutory provision in holding that the district court had abused its discretion in enjoining HUD from releasing funds under the model cities program, which was not tainted by discrimination, in order to cure the discrimination found in the public housing program. *Gautreaux* v. *Romney*, 457 F. 2d 124, 128 (C.A. 7). The court held that although Section 602 applies to administrative, rather than judicial, remedies, the statutory policy is equally valid for equity courts. That policy is to protect "the innocent beneficiaries of the programs and activities not tainted by discriminatory tactics." 457 F. 2d at 128. In now ordering metropolitan area-wide relief, however, the court of appeals has violated this policy: to the extent that such relief requires suburban housing authorities to provide housing for the respondent class, it could result in the displacement of suburban public housing applicants, who are themselves "the innocent beneficiaries of * * * programs * * * not tainted by discriminatory tactics." See pp. 38-39, *infra*.

stitutional limitations on appropriate judicial remedies where, as here, there has been no finding of either an inter-district violation or an inter-district effect of the violation found.

B. There Was No Finding Here Of Any Inter-District Violation Or Inter-District Effect.

It is arguable whether this Court's opinion in *Milliken* would require a finding of both an inter-district violation and an inter-district effect before inter-district relief may be granted in cases such as this, or whether a finding of either element would suffice. Indeed, the distinction between *both* and *either* may not often be relevant: there may be few, if any, situations in which an inter-district violation would not have an inter-district effect, and it may be similarly rare that an intra-district violation would have substantial segregatory effects outside that district. Moreover, the answer to the both-or-either question may not be the same in all cases. It is possible to imagine cases in which one element might suffice for inter-district relief and others in which, at least arguably, both might be necessary. In any event, the factual setting of this case does not call for a choice between *both* and *either*, for, as we now show, *neither* of the two conditions specified in *Milliken* was met here: there was no inter-district

violation, and the intra-district violation found had no segregatory inter-district effect.

1. *The unlawful racial discrimination found by the courts below related solely to racially discriminatory public housing practices within the political boundaries of the City of Chicago.*

From its inception, this litigation focused exclusively upon racially discriminatory public housing practices within the political boundaries of the City of Chicago. The complaint alleged that HUD was "assist[ing] in the carrying on of a racially discriminatory public housing system *within the City of Chicago*" (Complaint, p. 2; App. 26; emphasis added); it contained no allegation concerning public housing practices outside Chicago. Indeed, respondents have expressly conceded that "the segregation complained of was physically limited to within the City of Chicago" (Transcript of Proceedings of July 24, 1972, p. 71; see also *id.* at 64; App. 72; 67-68). Summary judgment was entered against HUD, based solely upon a determination that "the Secretary exercised [his] powers in a manner which perpetuated a racially discriminatory housing system *in Chicago*, and * * * the Secretary and other HUD officials were aware of that fact" (Pet. App. 32a-33a; emphasis added).[16]

[16] There was, moreover, no finding of active misconduct by HUD. The sole violation of law HUD has been found to have engaged in is that, within the City of Chicago, it funded CHA although aware of CHA's practice of discriminatory site selection for public housing.

The court of appeals, at the time of ordering entry of summary judgment, urged that its holding "not be construed as granting a broad license for interference with the programs and actions of an already beleaguered federal agency" (Pet. App. 36a). On remand, respondents nevertheless requested metropolitan area-wide relief. In connection with that request, respondents offered their Exhibit 11 (App. 144), setting forth data relating to thirteen family public housing projects in the Chicago suburban area; the point made by respondents with regard to this data was not that the suburban housing authorities themselves had followed racially discriminatory practices, but only that existing suburban housing projects did not provide the respondent class with an adequate opportunity to reside in racially integrated neighborhoods (Transcript of Proceedings of November 27, 1972, pp. 50-51; Transcript of Proceedings of November 29, 1972, pp. 375-382; App. 112-113, 197-201).[17] Respondents also argued that a Chicago-only remedy would not achieve substantial residential desegregation in the long run, for, according to at least one projection, every census tract in the City of Chicago would be at least 30 percent black

[17] Exhibit 11 shows that three of the suburban public housing projects are located in predominantly white census tracts and that a fourth involves leased housing located throughout Evanston, a predominantly white suburb (the Exhibit does not indicate in which census tracts that housing is located). The other projects apparently are located in black neighborhoods. See note 19, *infra*.

by the year 2000 (Transcript of Proceedings of November 29, 1972, p. 368; App. 196).

The district court rejected respondent's request for metropolitan area-wide relief as "unwarranted" (Pet. App. 38a). The court correctly pointed out (Pet. App. 38a-39a):

> * * * [T]he wrongs were committed within the limits of Chicago and solely against residents of the City. It has never been alleged that CHA and HUD discriminated or fostered racial discrimination in the suburbs and, given the limits of CHA's jurisdiction, such claims could never be proved against the principal offender herein. After years of seemingly interminable litigation, plaintiffs now suggest that I consider a metropolitan plan for relief against political entities which have previously had nothing to do with this lawsuit. The factual basis for their request is an opinion of an urbanologist that by the year 2000 the entire geographic area of the City of Chicago will be within the limited public housing area as defined by the judgment order entered on July 1, 1969. This is simply inadequate to support a request to consider imposing obligations upon those who were and are incapable of discriminatory site selection within the City of Chicago.

On appeal from the denial of metropolitan area-wide relief, respondents did not argue that the evidence established an inter-district violation. Instead, relying upon *Bradley* v. *Milliken*, 484 F. 2d 215 (C.A. 6), which had not then yet been reversed by this Court, respondents argued that "the circumstance

that the violation in this case took place within the political boundaries of the City of Chicago affords no reason for limiting the remedy to those boundaries * * *" (Reply Brief to Brief of Appellee HUD, p. 4, filed June 7, 1974). It was not until after this Court decided *Milliken* that respondents first argued that their Exhibit 11 furnished evidence "of segregation in the public housing system in the suburban part of the Chicago housing market area" (Memorandum, p. 11, filed August 14, 1974).

In ordering the adoption of a metropolitan area-wide plan, the court of appeals did not expressly find that either HUD or CHA had engaged in racially discriminatory practices beyond the political boundaries of the City of Chicago. The court did, however, refer to respondents' Exhibit 11 as "evidence of suburban discrimination," although without specifying by whom, or against whom, such discrimination had been committed (Pet. App. 54a).[18]

The court of appeals erred in suggesting that respondents' Exhibit 11 established the commission of

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[18] The court of appeals also relied upon the findings in *Clark* v. *Universal Builders, Inc.*, 501 F. 2d 324 (C.A. 7), certiorari denied, 419 U.S. 1070. Those findings, however, would not support a finding of an inter-district violation in this litigation. *Clark* involved the activities of private real estate developers; neither HUD, CHA, Chicago, nor the suburban governments were parties to that action. In *Clark*, the court judicially noticed "that there exists in Chicago and its environs a high degree of racial residential segregation" (501 F. 2d at 335), but the court did not suggest that the public housing programs of either the city or the suburbs had contributed to, or that HUD and CHA were in any way responsible for, that segregation.

an inter-district violation by either HUD or the suburban housing authorities, the latter of which were not even parties before the court. Exhibit 11 does not, in itself, provide evidence of racially discriminatory housing practices at all. Only one of the suburban projects listed in Exhibit 11 (Chicago Heights) fits within the Chicago pattern, *i.e.*, the construction of public housing in the black neighborhood of a predominantly white municipality; the other projects apparently were constructed either in predominantly black municipalities or in white neighborhoods of predominantly white municipalities.[19] And even if Exhibit 11 constituted evidence that might, in conjunction with other evidence, be probative on the question whether suburban public

[19] Of the thirteen public housing projects in Exhibit 11, three are located in census tracts which in 1970 were less than one-third non-white. A fourth project, in Evanston, Illinois, involves leased housing units located in census tracts whose racial composition is not disclosed—in 1970, Evanston contained seventeen census tracts, only two of which were predominantly black. United States Department of Commerce, *1970 Census of Population and Housing*, PHC(1)-43, Pt. 1, pp. 68-69. Five of the remaining housing projects are located in East Chicago Heights and Robbins, municipalities that have no predominantly white census tracts. United States Department of Commerce, *1970 Census of Population*, Vol. 1, Pt. 15, table 16, pp. 84, 86. Of the remaining four projects, two were completed in 1953 in census tracts whose racial balance at that time is not shown, one is located in a census tract which apparently became predominantly black after the project had been approved and completed, and one project (in the predominantly white municipality of Chicago Heights) was apparently constructed in a census tract which was predominantly black.

housing practices were racially discriminatory, there in fact has been no finding of any inter-district violation.[20] To the contrary, the district court expressly found that "the wrongs were committed within the limits of Chicago and solely against residents of the City" (Pet. App. 38a).

Here, as in *Milliken*, "the Court of Appeals shifted the primary focus from a [city-wide] remedy to the metropolitan area only because of [its] conclusion that total desegregation of [the city] would not produce the racial balance which [it] perceived as desirable" (418 U.S. at 739-740). This approach is incorrect here, as it was in *Milliken*, because the Constitution does not require any particular racial balance; what it does require is racially neutral operation of each politically separate system. That goal may be achieved here without implicating unoffending suburban entities in a coercive metropolitan area-wide plan. "Boundary lines may be bridged where there has been [an inter-district] constitutional vio-

[20] In *Milliken* itself there were some isolated facts that might have suggested the possibility of an inter-district violation. For example, for a period of time students from a predominantly black suburban district had been transferred to a predominantly black city school rather than to predominantly white suburban schools, thereby causing "a segregative effect on the school populations of the two districts involved" (418 U.S. at 750); the State had rescinded the City of Detroit's voluntary desegregation plan (*ibid.*); and the State had approved school sites that caused *de jure* segregation within the City of Detroit (418 U.S. at 751). But in *Milliken*, as here, there was in fact no finding of an inter-district violation.

lation calling for interdistrict relief, but the notion that * * * [such] lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of * * * our country." *Milliken*, *supra*, 418 U.S. at 741.

2. *The discriminatory public housing practices within the City of Chicago had no discernible segregatory inter-district effect.*

The district court below did not find that the discriminatory public housing practices within the City of Chicago had any segregatory inter-district effect. Indeed, there was no evidence suggestive of such an effect. The court of appeals justified its decision in this case by the wholly unsupported speculation that "discriminatory site selection within the City of Chicago may well have fostered racial paranoia and encouraged the 'white flight' phenomenon * * *" (Pet. App. 62a). Such conjecture without evidentiary support is an improper basis for the grant of interdistrict relief. Moreover, the court's speculation here is both illogical and contrary to the evidence.

To the extent that the " 'white flight' phenomenon" reflects a desire on the part of the "fleeing" whites for residential segregation,[21] as a matter of purely

[21] The soundness of this premise is open to question. Respondents' expert witness, Dr. Hauser, explained the " 'white flight' phenomenon" as simply the continuation of a long-term movement, beginning as early as 1840, of higher-income groups away from the central downtown area—first to residential neighborhoods in the outlying areas of the city, then to the suburbs (Transcript of Proceedings of September 28, 1972, pp. 153-154; App. 99-100). As Dr. Hauser further pointed out, this movement involves blacks as well as whites: affluent blacks have been moving out of the central city, and the black population of the suburbs increased by more than 70 percent during the 1960's (Transcript of Proceedings of September 28, 1972, pp. 162-163; App. 104-105).

deductive logic one would have to conclude that CHA's racially discriminatory public housing practices, by contributing to the maintenance of residential segregation in the City of Chicago, actually slowed rather than fostered migration of whites out of the city. The little evidence of record that bears at all on this issue supports this conclusion. Respondents' expert witness, urbanologist Dr. Phillip M. Hauser, testified that, in his view, under the prevailing circumstances "white flight" might have accelerated if more low-income public housing units had been placed in the predominantly white areas of Chicago (Transcript of Proceedings of September 28, 1972, pp. 167-169; App. 107-108).[22] Thus, if there is to be any conclusion drawn from the record, it must be one directly contrary to the speculation of the court of appeals: the placing of public housing projects in predominantly black neighborhoods did *not* encourage the migration

[22] It may be that the effect on urban migratory patterns of a different public housing policy would have been insubstantial. The number of individuals living in all types of public housing in Chicago (about 147,000) is quite small in relation to the total population of the city (3,366,957). United States Department of Commerce, *1970 Census of Population*, Vol. 1, Pt. 15, table 11, p. 55. The dispersal of public housing units throughout the city in a racially neutral manner might therefore have had little or no impact on white migration.

of whites out of the city. There was, therefore, no segregatory inter-district effect.

C. Practical Considerations Also Militate Against The Award Of Inter-District Relief In This Case.

The court of appeals construed this Court's decision in *Milliken* as resting primarily on considerations of practicality, stating that "[w]e understand *Milliken* * * * to hold that the relief sought there would be an impractical and unreasonable over-response to a violation limited to one school district" (Pet. App. 51a). The court then decided that the problems involved in developing and implementing a metropolitan area-wide housing plan "would be insignificant" (Pet. App. 53a) and therefore that inter-district relief could appropriately be ordered here. As we have shown (note 15, *supra*), the court's reading of *Milliken* was incorrect; this Court's emphasis in *Milliken* was on the scope of the wrong to be remedied, not on the administrability of the remedy. In any event, as we now show, the court of appeals erred in its assessment of the practicalities of metropolitan area-wide relief here.

The court of appeals identified the tradition of local control of public schools and the administrative problems involved in cross-district bussing as the practical considerations that rendered an inter-district remedy inappropriate in *Milliken*. Determining that such considerations were absent here, the court remanded for "the adoption of a comprehensive metropolitan area plan" (Pet. App. 59a). But the

tradition of local control over urban land usage—of which public housing is but a small part—is at least as firmly established as the tradition of local control over public schools, and the administrative problems inherent in a judicially devised and enforced metropolitan area-wide plan would in fact be quite substantial.

1. *An inter-district remedy here would be contrary to the statutory scheme, which reserves to the local community the decision whether to participate in federally funded public housing programs.*

A comparison of the facts of this case with those in *Milliken* illustrates the impropriety of inter-district relief here. HUD's involvement in the public housing program is far more limited than the role played by the State of Michigan in the administration of the public schools in *Milliken*. For example, the State had authority to compel local school districts to comply with a metropolitan area-wide plan (418 U.S. at 726, n. 5; see also *id.* at 793-798 (dissenting opinion of Justice Marshall)), whereas HUD has no similar authority over local housing authorities or other local agencies. Nothing in the federal statutes requires any community to participate in public housing programs. To be sure, those programs rest upon federal financial support,[23] and if a community does decide to participate, HUD's approval

[23] Operation of the Michigan public schools similarly was substantially dependent on state support. 418 U.S. at 795, n. 6 (dissenting opinion of Justice Marshall).

will be required with respect to many aspects of the operation of the programs.[24] But the initial decision to participate (with one minor exception; see pp. 33-34, *infra*) remains with local authorities.[25]

Judicial formulation and imposition of metropolitan area-wide relief, in the form of a mandatory inter-district public housing plan, would significantly interfere with this historic local autonomy over public housing. Such relief would also be inconsistent with the legislative intent to preserve this local autonomy that is reflected in the statutes under which HUD operates. See, *e.g.*, H.R. Rep. No. 93-1114, 93d Cong., 2d Sess. 3 (1974); S. Rep. No. 93-693, 93d Cong., 2d Sess. 44 (1974). HUD has a direct responsibility to assure that these statutes are implemented as Congress intended.

Moreover, reluctance to participate in a metropolitan area-wide plan designed to remedy the effects of discrimination in Chicago may lead suburban communities to refrain from applying to HUD for public housing assistance, at least until the plan has been developed, and perhaps thereafter. This could severely impede the implementation of HUD programs de-

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[24] Michigan similarly controls many aspects of the local school systems' operations. 418 U.S. at 795-796 (dissenting opinion of Justice Marshall).

[25] In contrast, it is doubtful whether, under state law, a Michigan community could determine to have no public schools at all. See 418 U.S. at 749, n. 23. And see *Griffin* v. *County School Board*, 377 U.S. 218.

signed to assure that all citizens are adequately housed.

This litigation principally relates to three public housing programs; the low-rent public housing program, the block grant program and the leased public housing program. Under each of these programs the decision whether or not to participate is, either explicitly or as a practical matter, reserved to the local government.

a. *Low-rent public housing.*

The low-rent public housing program was established by the United States Housing Act of 1937, 42 U.S.C. 1401, *et seq.*, and has recently been revised by Section 201 of the Housing and Community Development Act of 1974, 88 Stat. 653. The 1974 Act continues the basic policy of the 1937 Act by declaring that "[i]t is the policy of the United States * * * to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs." Section 201 of the 1974 Act, 88 Stat. 653; accord, 42 U.S.C. 1401. This basic policy is implemented by providing federal financial assistance to local housing authorities under annual contribution contracts (42 U.S.C. 1410; Section 201 of the 1974 Act, 88 Stat. 656) that can be entered into only after the participating housing authority has executed a cooperation agreement with the governing body of the locality involved (42 U.S.C. 1415 (7) (b); Section 201 of the 1974 Act, 88 Stat. 658). This requirement insures that there will be a "local determination of the need for low-income housing

* * *." 42 U.S.C. 1415(7); Section 201 of the 1974 Act, 88 Stat. 658.[26]

b. *Block grants.*

Section 103 of the 1974 Act, 88 Stat. 637, creates a block grant program, under which funds are to be distributed to units of local government on the basis of an objective formula weighing such factors as population, poverty, and housing overcrowding. The block grant program is a form of special revenue-sharing that supersedes the urban renewal, model cities, and neighborhood development programs, but it is designed to serve essentially the same purposes as those older programs.

Each application by a local government for block grant funds must be accompanied by a "Housing Assistance Plan," which must (1) survey existing housing and assess the housing assistance needs of lower-income persons, including those expected to reside in the community, (2) state a realistic annual goal for the number of units or persons to be assisted, and (3) indicate the general locations of the proposed housing. Section 104 of the 1974 Act, 88 Stat. 638. The Secretary is required to approve an application for a block grant unless it is (1) "plainly inconsistent" with generally available facts and data, (2)

[26] The local government's cooperation is further necessitated by the fact that payments under an annual contribution contract cannot be made unless the project involved "is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivisions * * *." 42 U.S.C. 1410(h); Section 201 of the 1974 Act, 88 Stat. 660.

"plainly inappropriate" to meeting the needs identified by the recipient, or (3) not in compliance with applicable law. Section 104 of the 1974 Act, 88 Stat. 639.

c. *Leased public housing.*

The leased public housing program was established in 1965 under Section 23 of the United States Housing Act, 42 U.S.C. 1421b, and was revised by Section 201 of the 1974 Act, 88 Stat. 662. Prior to revision, the program provided for payment of federal financial assistance to local housing authorities that leased units in privately-owned accommodations for subleasing as low-rent housing; the governing statute explicitly stated that the program "shall not apply to any locality unless the governing body of the locality has by resolution approved the application of such provisions to such locality." 42 U.S.C. 1421b(a)(2).

Under the revised program the federal payments are made on behalf of individual tenants, to assist them to occupy new or rehabilitated housing units.[27] The payments may be made either to the local housing authority or, at least in the case of newly constructed units, to the owner. Determinations of tenant eligibility, selection, and assignment are made by the participating housing authority, or, if there is none, by the owner of the unit. Although local governmental approval is no longer explicitly required as a condition of the program's applicability to a

[27] The federal subsidy equals the difference between the fair market rental value of the unit to be occupied and a specific percentage of the tenant's gross income.

locality, local governmental bodies in fact must be substantially involved in the critical decisions affecting the operation of a leased public housing program. This is self-evidently the case when the leasing or subleasing remains, as before, the responsibility of the local housing authority. But it is also true where HUD contracts directly with a private developer, for the developer cannot prepare an acceptable proposal without qualifying under local zoning regulations and arranging for the provision of needed services by local authorities.[28] Thus the practical operation of the leased housing program remains, in a significant degree, under local control.

2. *The administrative problems inherent in a judicially devised and enforced metropolitan area-wide public housing plan would be substantial.*

The court of appeals erred in determining that the practical and administrative problems of implementing a metropolitan area-wide public housing plan would be insubstantial. The fact that, as in *Milliken*, there is no particular comprehensive plan

[28] In localities covered by a housing assistance plan, the Secretary must submit applications for assistance under this program to the local government unit, for consideration of its consistency with the local plan. If, after receiving the local unit's advice, the Secretary finds the application inconsistent with the plan, he must reject the application. Section 213(a) of the 1974 Act, 88 Stat. 674. In localities where no housing assistance plan applies, the Secretary may not approve an application unless he determines, *inter alia*, "that there is or will be available in the area public facilities and services adequate to serve the housing proposed to be assisted." Section 213(c) of the 1974 Act, 88 Stat. 675.

before the Court precludes a full assessment of the problems that will arise.[29] It is possible at this stage, however, to isolate some of those problems.

The relief contemplated by the court of appeals inevitably will subject suburban governmental agencies, none of which has been found to have committed racially discriminatory public housing practices, to substantial financial and administrative burdens.[30] The core of any metropolitan area-wide plan would be the expansion of suburban public housing and the placing of Chicago residents in that housing. It is

[29] Indeed, it is unclear even what geographical area is to be covered. Originally, respondents sought relief covering the Chicago Urbanized Area, which consists of portions of Cook, Dupage, and Lake Counties, and includes six local housing authorities. See Plaintiffs' Proposed Judgment Order, filed September 25, 1972, p. 3; Plaintiffs' Exhibit 11; App. 78, 144. That presumably was the "metropolitan" area contemplated by the court of appeals in ordering the grant of metropolitan area-wide relief. See Pet. App. 52a-53a. But, both in this Court and in the district court, respondents now seek to expand the geographical area involved to include the Chicago Housing Market Area, consisting of six Illinois counties (Cook, Dupage, Kane, Lake, McHenry, and Will) with twelve local housing authorities (Br. in Opp. 11, 16, n. 2; Second Supplemental Complaint, pp. 2, 9-10; App. 214, 218-219).

[30] Respondents suggest inter-district relief is appropriate because here, in contrast with the situation in *Milliken*, the development of a metropolitan area-wide plan has been urged from the outset (Br. in Opp. 31). But the significance of the change in theory in *Milliken* was that it had precluded the suburban parties there from showing that they had committed no acts calling for equitable relief against them. Here the suburban governments and their agencies have not even been parties to the case heretofore; they have had no opportunity to present evidence.

clear that no such plan can be carried out on a purely voluntary basis. A voluntary program encouraged by the district court since 1969 has been "a 100% failure" (see note 7, *supra;* see also Pet. App. 53a). To be effective, therefore, a metropolitan area-wide plan, which presumably would operate within the framework of existing federal housing legislation (see pp. 29-34; *supra*), must perforce coerce the participation of the suburban governments and their agencies. Absent coerced consolidation of separate housing authorities by judicial decree, the suburbs, which have not been shown to be involved in any violation, would be free, as Congress intended, to accept or reject participation in a metropolitan area-wide plan. That coercion cannot be effective if directed solely against HUD; HUD's role is to assist the local political jurisdiction in carrying out its housing plan.

The sheer number of suburban governmental units that would be subjected to judicial supervision would pose an overwhelming problem for the supervising court. There are more than 200 separate cities, villages, and townships in the three-county urbanized area that respondents first defined as the appropriate area for metropolitan relief, and more than 300 such units in the six-county housing market area throughout which they now assert relief to be appropriate (see notes 12, 29, *supra*). United States Department of Commerce, *1970 Census of Population*, Vol. 1, Pt. 15, tables 10, 11, pp. 32-50, 55-57.

Moreover, the construction of new public housing will inevitably entail expansion of many municipal services—not only the sewers, watermains, and electricity lines directly required by the housing units, but also streets, schools, and transportation facilities, as well as the police, fire, health and similar services required by the new residents. Thus, in supervising the development and implementation of a metropolitan area-wide housing plan, the court will have to concern itself with the need to provide a whole range of municipal services in order to make the construction and occupation of the public housing units feasible. While the district court in *Milliken* would have become the *de facto* school superintendent for the entire inter-district area (418 U.S. at 745-746), the district court here, in devising and enforcing a metropolitan area-wide plan, would in significant ways become the master metropolitan government.

Moreover, the costs of providing these additional municipal services can be expected to be not only substantial but, in many cases, beyond the reasonable capability of the affected local government. See Brief of the City of Joliet, Illinois, as *amicus curiae*, pp. 7-8. Yet HUD has no authority to provide these services; they will be the responsibility of the community in which the housing is located. See *James* v. *Valtierra*, 402 U.S. 137, 143, n. 4. By contrast, in *Milliken* the State had ultimate responsibility for the local school systems, which were state agencies. See pp. 29-30, *supra*. The State could thus have more

readily implemented inter-district relief in *Milliken* than HUD can here.

Other problems may be anticipated. The essence of the relief contemplated by the court of appeals is the placing of members of the respondent class, *i.e.*, black residents of Chicago who reside in, or have applied for, CHA public housing projects, in suburban public housing. Accordingly, the district court would be required not only to direct the construction or leasing of new public housing units in the suburbs, but also to determine what proportion of those units are to be allocated to the respondent class. That allocation will directly affect the interests of public housing applicants already residing in the suburbs.[31] Their interests will of course conflict with those represented by respondents; each class will be in direct competition for the scarce resource of public housing. Respondents cannot represent both classes. See Fed. R. Civ. P. 23(a). Cf. *Warth* v. *Seldin*, No. 73-2024, decided June 25, 1975. The procedure under which suburban public housing units would be fairly allocated as between city residents and suburban residents remains an unresolved problem. Cf. *Croskey*

[31] The ratio of public housing units to total population is far lower in the suburbs than in Chicago. Transcript of Proceednigs of November 27, 1972, p. 115; App. 142; Plaintiffs' Exhibit 11; App. 144-146; United States Department of Commerce, *1970 Census of Population*, Vol. 1, Pt. 15, table 11, pp. 55-57. It is thus reasonable to assume that there is in at least some of the suburbs, as in Chicago, a substantial backlog of present or potential applicants for admission to public housing.

Street Concerned Citizens v. *Romney*, 459 F. 2d 109, 113-114 (C.A. 3) (Aldisert, C.J., concurring).

In short the difficulties entailed in effectuating inter-district public housing orders could prove even more intractable than those that arise in the course of enforcing inter-district school desegregation orders. See Note, *The Limits of Litigation: Public Housing Site Selection and the Failure of Injunctive Relief*, 122 U. Pa. L. Rev. 1330 (1974); cf. Recent Cases, *Administrative Law-Urban Renewal*, 85 Harv. L. Rev. 870 (1972).[32] This is not to suggest that the courts should therefore refrain from issuing such orders in appropriate circumstances; it is only to emphasize that in the instant case considerations of practicality reinforce the long-standing equitable

[32] As the court of appeals noted (Pet. App. 54a-56a), HUD officials have advocated metropolitan area-wide planning for public housing. For the most part, such remarks have been directed toward the establishment of cooperative metropolitan efforts. There is, of course, an enormous difference between administrative encouragement of cooperative metropolitan planning and judicial formulation and imposition of an inter-district plan. "Remedial judicial authority does not put judges automatically in the shoes of * * * [local governmental] authorities whose powers are plenary." *Swann* v. *Board of Education, supra*, 402 U.S. at 16. Respondents attempt to derive some support from the fact that the government had not directly opposed the concept of inter-district relief before the district court (Br. in Opp. 4, 18). But the government has always opposed the specific forms of metropolitan area-wide relief sought by respondents, and a fuller review of the matter after the district court entered its order denying such relief led the government in the court of appeals to oppose the award of any inter-district relief in this case.

principle that the relief ordered should be no broader than the violation found.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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